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IN THE

Supreme Court of the United States

October Term, 1968

No. 37

JULIAN BOND, *et al.*,

Appellants,

v.

JAMES "SLOPPY" FLOYD, *et al.*,

On Appeal from the United States District Court for the Northern District of Georgia (Atlanta Division)

BRIEF OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE AS *AMICUS CURIAE*

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IN THE

Supreme Court of the United States

October Term, 1966

No. 87

JULIAN BOND, *et al.*,

Appellants,

v.

JAMES "SLOPPY" FLOYD, *et al.*,

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA (ATLANTA DIVISION)

BRIEF OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE AS *AMICUS CURIAE*

Statement of Interest

This brief *amicus curiae* is filed by the National Association for the Advancement of Colored People (NAACP) with the consent of the parties in accord with Rule 42 of the Rules of this Court.

The NAACP is a New York membership corporation with approximately 1,500 local affiliates in 46 of the 50 states. The aims and purposes of the NAACP overall are to secure to Negroes full and equal citizenship rights and to free them from the onerous barriers, restrictions, limitations and burdens of race. One of its specific and immediate objectives is for all qualified Negroes to be able to exercise the unfettered right to vote and participate freely in the political affairs of the nation at local, state and

national levels. Pursuant in part to its efforts, increasing numbers of Negroes are now asserting their franchise rights and are being elected to public office in the South. The emergence of the Negro as a vital force in the political arena in the South, an indispensable prerequisite to full and equal citizenship, is gravely imperiled in these proceedings.

Julian Bond, appellant here, was refused his seat as a member of the House of Representatives of the General Assembly of the State of Georgia. He had been duly elected to that office from House District No. 136 for the session of the General Assembly commencing January 10, 1966. When the legislative session began, appellant because of challenges to his qualifications was asked to step aside while other members of the House of Representatives took the oath of office. After the other members had been sworn and seated, the Speaker of the House referred the challenge to appellant's right to be seated to a special committee designated for the purpose. After hearing, the committee recommended that appellant not be seated because he did not meet requisite standards. This recommendation was acted upon favorably by the House by a vote of 184-12. Whereupon these proceedings were instituted in the court below.

The facts upon which the committee based its recommendation and the House its decision are these: The Student Non Violent Coordinating Committee (SNCC) issued a statement on January 6, 1966 opposing the involvement of the United States in the war in Viet Nam. It accused our government of deception "in its claims of concern for freedom of the Vietnamese people," of not being determined "to end the rule of terror and oppression within its own borders." Those unwilling to respond to the draft were applauded, and SNCC asserted that work "in the civil rights movement and with other human relations organizations is a valid alternative to the draft."

At the time appellant Bond was an officer in SNCC and publicly supported the statement in its entirety. Subsequently appellant told a newspaper reporter on inquiry that while he would not burn his own draft card, he admired the courage of those who did. Mr. Bond described himself as a pacifist, opposed to the war in Viet Nam and eager and anxious to encourage people not to participate in it. He explained that he favored the SNCC position because he felt it to be "hypocritical" for the United States to maintain that we are fighting for freedom in other places when we are not guaranteeing liberty to citizens inside the continental United States. For these statements appellant Bond was found not qualified to a seat in the House of Representatives.

At stake here is appellant's right as a public official to express his views on a matter of public interest and concern. In the absence of some overriding circumstances warranting a contrary result, appellant should be free to have his say, however erroneous or misguided. The propriety of Mr. Bond expressing these views as a public official representing the electors of House District No. 136 is a matter for the determination of the voters of that district. Since Mr. Bond has been reelected on two occasions after the House refused to allow him to take his seat, it is clear that a majority of the voters of House District No. 136 do not consider Mr. Bond's views a disqualification.

The underlying implications of the action taken here is to consign Negro electors and office holders to second-class status, inferior and different from that occupied by white electors and office holders. Thus, the outcome of this case is of serious import to the Negro's struggle for equal rights and equal justice. The merits of appellant's views are not at issue here. What is presented is his right to speak on the same terms and conditions as any other duly elected member of the House of Representatives. For these reasons the

NAACP is filing this brief with the hope that its presentation will aid the Court in appreciating more fully in all its ramifications the fundamental issue raised in these proceedings.

ARGUMENT

Race Discrimination Is Inextricably Involved in the Decision to Refuse to Seat Appellant.

The court below ruled that the "charge of racial discrimination and thus of denial of equal protection of the law is without foundation in fact." It was observed that the "contention that Mr. Bond was denied his seat because of his race was resolved adversely to him from the bench during the hearing of the matter."[1] This conclusion was reached because the court held that to find race discrimination a factor here would be "to create license in the name of race."[2]

It is this Court's consistent practice to make its own independent evaluation of the evidentiary facts upon which a lower court's adjudication of constitutional claims is based. *Edwards v. South Carolina*, 372 U. S. 229; *Blackburn* v. *Alabama*, 361 U. S. 199; *Spano* v. *New York*, 360 U. S. 315; *Napue* v. *Illinois*, 360 U. S. 264; *Muir* v. *Louisville Park Theatrical Association*, 120 F. Supp. 525 (W. D. Ky. 1951), aff'd, 202 F.2d 275 (6th Cir. 1953), vacated and remanded 344 U. S. 971; *Niemotko* v. *Maryland*, 340 U. S. 268; *Feiner* v. *New York*, 340 U. S. 315, 316, 322 fn. 4; *Watts* v. *Indiana*, 338 U. S. 49, 50-51; *Hooven & Allison Co.* v. *Evatt*, 324 U. S. 652, 659; *Pierre* v. *Louisiana*, 306 U. S. 354, 358; *Baltimore & Ohio Railroad Company* v. *United States*, 298 U. S. 349,

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[1] See case below reported in 251 F. Supp. 333, 339 (N. D. Ga. 1966).

[2] *Ibid.*

372; *St. Joseph Stock Yards Company* v. *United States,* 298 U. S. 38, 49-55; *Norris* v. *Alabama,* 294 U. S. 587, 589, 590; *Ohio Valley Water Company* v. *Ben Avon Borough,* 253 U. S. 287. Cf. *Ng Fung Ho* v. *White,* 259 U. S. 276, 284, 285. And see Jaffe, "Judicial Review: Constitutional and Jurisdictional Fact," 70 Harv. L. Rev. 953 (1957). It is respectfully submitted that such scrutiny in this case will reveal the error of the court below in ignoring race discrimination which was the generating force behind these proceedings, as a factor here.

After the 1954 Supreme Court decision striking down the separate but equal doctrine in public schools as violative of the Fourteenth and Fifth Amendments, *Brown* v. *Board of Education of Topeka,* 347 U. S. 483; *Bolling* v. *Sharp,* 347 U. S. 487, the Georgia State Legislature passed House Resolution No. 185 of the 1956 Session of the General Assembly of Georgia which provided in part:

> A Resolution to declare the Supreme Court decisions of May 17, 1954 and May 31, 1955, in the school segregation cases, and all similar decisions, by the Supreme Court null, void and of no effect; to declare that a contest of powers has arisen between the State of Georgia and the Supreme Court of the United States; to invoke the doctrine of interposition; and for other purposes.[3]

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[3] The remainder of the Resolution, as represented in 1 Race Rel. L. Rep. 438-440 (1956) reads in part:

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES, THE SENATE CONCURRING, That the General Assembly of Georgia, doth hereby unequivocally express a firm and determined resolution to maintain and defend the Constitution of the United States, and the Constitution of this State against every attempt, whether foreign or domestic, to undermine and destroy the fundamental principles, embodied in our basic law, by which the liberty of the people and the sovereignty of the States, in their proper spheres, have been long protected and assured;

That the General Assembly of Georgia doth explicitly and preemptorily declare that it views the powers of the Federal Government as resulting solely from the compact, to which the States are par-

The House approved this Resolution by a vote of 179-1.

(Footnote 3 continued)

ties, as limited by the plain sense and intention of the instrument creating that compact;

That the General Assembly of Georgia asserts that the powers of the Federal Government are valid only to the extent that these powers have been enumerated in the compact to which the various States assented originally and to which the States have assented in subsequent amendments validly adopted and ratified;

* * *

That the State of Georgia has at no time surrendered to the General Government its rights to maintain racially separate public schools and other public facilities;

That the State of Georgia, in ratifying the Fourteenth Amendment to the Constitution, did not agree, nor did the other States ratifying the Fourteenth Amendment agree, that the power to operate racially separate public schools and other facilities was to be prohibited to them thereby;

* * *

That the General Assembly of Georgia denies that the Supreme Court of the United States had the right which it asserted in the school cases decided by it on May 17, 1954, to enlarge the language and meaning of the compact by the States in an effort to withdraw from the States powers reserved to them and as daily exercised by them for almost a century;

That a question of contested power has arisen; the Supreme Court of the United States asserts, for its part, that the States did in fact prohibit unto themselves the power to maintain racially separate public institutions and the State of Georgia, for its part, asserts that it and its sister States have never surrendered such right;

That this assertion upon the part of the Supreme Court of the United States, accompanied by threats of coercion and compulsion against the sovereign States of this Union, constitutes a deliberate, palpable, and dangerous attempt by the Court to prohibit to the States certain rights and powers never surrendered by them;

That the General Assembly of Georgia asserts that whenever the General Government attempts to engage in the deliberate, palpable and dangerous exercise of powers not granted to it, the States who are parties to the compact have the right, and are in duty bound, to interpose for arresting the progress of the evil, and for maintaining, within their respective limits, the authorities, rights and liberties appertaining to them;

* * *

That if said Court had had jurisdiction and authority to try and determine said cases, it was powerless to interfere with the operation

Among those voting with the majority were 14 representa-

(Footnote 3 continued)

of the public schools of States, because the Constitution of the United States does not confer upon the General Government any power or authority over such schools or over the subject of education, jurisdiction over these matters being reserved to the States, nor did the States by the Fourteenth Amendment authorize any interference on the part of the Judicial Department or any other department of the Federal Government with the operation by the States of such public schools as they might in their discretion see fit to establish and operate;

That by said cases the Court announces its power to adjudge State laws unconstitutional upon the basis of the Court's opinion of such laws as tested by rules of the inexact and speculative theories of psychological knowledge, which power and authority is beyond the jurisdiction of said Court;

That if the Court is permitted to exercise the power to judge the nature and effect of a law by supposed principles of psychological theory, and to hold the statute or Constitution of a State unconstitutional because of the opinions of the Judges as to its suitability, the States will have been destroyed, and the indestructible Union of Indestructible States established by the Constitution of the United States will have ceased to exist, and in its stead the Court will have created, without jurisdiction or authority from the people, one central government of total power;

That implementing its decision of May 17, 1954, said Court on May 31, 1955, upon further consideration of said cases, said: "All provisions of Federal, State, or local law . . . must yield" to said decision of May 17, 1954; said Court thereby presuming arrogantly to give orders to the State of Georgia;

That it is clear that said Court has deliberately resolved to disobey the Constitution of the United States, and to flout and defy the Supreme Law of the Land;

That the State of Georgia has the right to operate and maintain a public school system utilizing such educational methods therein as in her judgment are conducive to the welfare of those to be educated and the people of the State generally . . .

* * *

That the duty and responsibility of protecting life property and the priceless possessions of freedom rests upon the Government of Georgia as to all those within her territorial limits. The State alone has this responsibility. Laboring under this high obligation she is possessed of the means to effectuate it. It is the duty of the State

tives who in 1966 voted to refuse to seat Julian Bond.[4]

(Footnote 3 continued)

in flagrant cases such as this to interpose its powers between its people and the effort of said Court to assert an unlawful dominion over them;

THEREFORE, BE IT FURTHER RESOLVED BY THE HOUSE OF REPRESENTATIVES, THE SENATE CONCURRING:

First: That said decisions and orders of the Supreme Court of the United States relating to separation of the races in the public institutions of a State as announced and promulgated by said Court on May 17, 1954, and May 31, 1955, are null, void and of no force or effect;

Second: That hereby there is declared the firm intention of this State to take all appropriate measures honorably and constitutionally available to the State, to avoid this illegal encroachment upon the rights of her people;

Third: That we urge upon our sister States firm and deliberate efforts upon their part to check this and further encroachment on the part of the General Government, and on the part of said Court through judicial legislation, upon the reserved powers of all the States, that by united efforts the States may be preserved. . . .

[4] The 14 representatives voting in favor of the House Resolution No. 185 and voting not to seat Bond, are:

George T. Bagby of Dallas
Mac Barber of Commerce
J. Lucius Black of Preston
Johnnie L. Caldwell of Thomaston
James H. Floyd of Trion
A. T. Land, Sr., of Allentown
Chappelle Matthews of Athens
Tom C. Palmer, Jr., of Chamblee (in 1956 a representative from Pelham)
Glenn S. Phillips of Harlem
Mac Pickard of Columbus
Emory L. Rowland of Wrightsville
George L. Smith, II of Swainsboro
Joe C. Underwood of Mt. Vernon
W. M. "Bill" Williams of Gainesville

See House *Journal*, Georgia General Assembly, Regular Session, 1956, pp. 782-783 for roll-call vote on the Interposition Resolution.

During the same 1956 session, the Georgia House passed a law providing punishments for "any peace officer . . . who knowingly refuses or fails to attempt to enforce any law of this state requiring segregation. . . ."[5] This act punish-

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[5] Act No. 197, 1956 Session of the General Assembly of Georgia as reprinted in 1 Race Rel. L., Rep. 450-451 (1956) in part provides:

§ 1. An act to provide revenue and a source of revenue for the purpose of paying annuities and benefits to the peace officers of the State of Georgia; to provide for a commission to receive and disburse such funds; to provide for a method of payment of such funds to beneficiaries thereof, and for other purposes, approved February 1, 1950 (Ga. Laws 1950, p. 50), as amended by an Act approved February 21, 1951 (Ga. Laws 1951, p. 472), An Act approved February 12, 1952 (Ga. Laws 1952, p. 81), An Act approved March 11, 1953 (Ga. Laws 1953, Jan.-Feb. session, p. 574), an Act approved January 5, 1954 (Ga. Laws 1953, Nov.-Dec. session, p. 488), and an Act approved March 3, 1955 (Ga. Laws 1955, p. 387), is hereby amended by adding thereto, as amended, a new Section to be known as Section 26 and to read as follows:

"(a) Any peace officer, as herein defined, except wardens or prison guards of any State, County or City Public Works Camp or Prison, who knowingly refuses or fails to attempt to enforce any law of this State requiring segregation or separation of the White and colored races in any manner or activity, or any such peace officer who knowingly fails to take any necessary or appropriate action for such enforcement thereof shall forfeit all retirement benefits, all disability payments, and all death benefits, to which such peace officer or his beneficiaries would have been otherwise entitled to under provisions of this Act * * *

(b) Any member or official of the Peace Officers Annuity and Benefit Fund or any other aggrieved person who may desire to institute charges against any member of the said Fund under this Section shall do so by filing written charges with the Board, which charges must be filed within six months from the date of the alleged dereliction; thereupon the Board shall serve upon any member a statement of the charges against him and notice of a hearing thereon to be heard at a time and place fixed in said notice, which shall be not less than ten (10) days after the date of service thereof. Such member shall have an opportunity to appear, be heard, and present

ing law enforcement officers who did not oppose national policy and constitutional mandates was approved by the House by a vote of 125-1. Nine of the members who voted yes on this bill also voted to prevent Julian Bond from taking his seat.[6]

The 1956 session of the Georgia General Assembly included in the general appropriations act a provision requiring that appropriations for public education be limited exclusively to those districts maintaining segregated schools. Even if a court of law declared this provision unconstitutional and required desegregation in a given school district, state officials would nonetheless "have no power to make any apportionment for the benefit of any of the public

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(Footnote 5 continued)

his defense. . . . If after such hearing the Board shall determine that such member has knowingly failed or refused to attempt to enforce any law of this State requiring segregation or separation of the white and colored races in any manner or activity or that such member has failed to take any necessary or appropriate action for such enforcement thereof, the Board shall order all retirement benefits, all disability payments, all death benefits and any other benefits to which such member or his beneficiaries may or would have been entitled to under the provisions of this Act or any amendments hereinafter made thereto forfeited. The decision of the Board shall be final."

[6] The nine representatives voting in favor of the act, and voting not to seat Bond, are:

Mac Barber	Emory L. Rowland
J. Lucius Black	George L. Smith II
J. Roy McCracken	Joe C. Underwood
Chappelle Matthews	W. M. "Bill" Williams
Tom C. Palmer, Jr.	

See House *Journal*, Georgia General Assembly, Regular Session, 1956, pp. 1374-1375, for roll-call vote in Act No. 197.

schools within such school district. . . ."[7] This require-

[7] Excerpts from the General Appropriation Act for the fiscal year 1957 of the General Assembly of Georgia (HR 243) as reprinted in 1 Race Rel. L. Rep. 421-422 (1956):

* * *

Section 7

* * *

Provided, further, that (a) the appropriations made in this section for the benefit of public schools are limited to the public schools within such school districts as shall provide separate schools for white and colored children throughout the entire district, and as is provided by Article VIII, Section I, Paragraph I of the Constitution of this State, and in which all the white and colored children attending public schools shall attend separate schools, the General Assembly declining to make any appropriation for the benefit of any other public schools. Funds apportioned or made available under this Section 7 for the benefit of the public schools within any school district shall be deemed to be separately appropriated to the public schools within such school district, and shall be separately subject to the limitation imposed by this subsection upon their use, which limitation shall be deemed to be a condition precedent to such appropriation. In any of the events provided by subsection (d) hereof said appropriation shall be null and void.

* * *

(d) In the event of the prosecution to effective judgment of a suit in respect of any public school district resulting in determination by a court of competent jurisdiction that any portion of this Section 7 is unconstitutional, or that the public authorities in charge of the public schools within such district may not provide separate schools for the white and colored races within such school district as is required by Article VIII, Section I, Paragraph I of the Constitution of this State, and in the manner provided by subsection (a) hereof, the State Board of Education shall have no power to make any apportionment for the benefit of any of the public schools within such school district, and the State Budget Authorities shall have no power to make any part of the appropriation provided in this Section 7 or any other funds available to or for the benefit of such public schools; and if such effective judgment shall occur after apportionment made to such public schools by the State Board of Education and order of the State Budget Authorities approving the same, no further funds from such apportionment to such public schools shall be paid by any officer of this State. The Governor

ment that state officials oppose national policy even to the

(Footnote 7 continued)

shall by written order determine when any such judgment has become effective.

* * *

Section 8

* * *

Provided, further, that (a) the appropriations made in this Section 8 for the benefit of the State Board of Regents and the University System or otherwise, so far as the same relate to schools and colleges, are limited to schools and colleges providing separate education for the white and colored races, and operating in conformity to Article VIII, Section I, Paragraph I of the Constitution of this State, the General Assembly declining to appropriate funds for any school or college operating otherwise. Funds apportioned or made available under this Section 8 for the benefit of any school or college shall be deemed to be separately appropriated for the benefit of such school or college, and shall be separately subject to the limitation imposed by this subsection upon their use, which limitation shall be deemed to be a condition precedent to such appropriation. In any of the events provided by subsection (d) said appropriation shall be null and void. Schools and colleges as used in this Section 8 shall include branches, departments and institutions of the University System, whether located at the State University at Athens or elsewhere, such as the School of Law, the School of Education, the School of Dentistry, the School of Medicine, each of which shall be deemed to be a separate school or college.

* * *

(d) In the event any suit is prosecuted to effective judgment of a court of competent jurisdiction against the State Board of Regents or other authorities in charge of any school or college to which this Section 8 relates or in relation to any such school or college, resulting in determination by such court that any provision of said Section 8 is unconstitutional, or that any such school or college may not be operated in conformity to Article VIII, Section I, Paragraph I of the Constitution of this State, and as provided in subsection (a) hereof, or requiring the admission to such school or college of any person denied admission by the authorities in charge thereof, the school or college affected by such judgment shall not thereafter be included in any apportionment of the State Board of Regents nor in any order of the State Budget Authorities making funds available. If such effective judgment shall be rendered in respect of any school

point of defiance of state and federal court orders was passed with the aid of the votes of 14 representatives who later voted to prevent Julian Bond from taking his seat in the House.[8] Earlier in the 1956 session, the House had approved a similar funds-cutting proposal by a 116-0 vote, but no roll-call vote was recorded.[9]

In 1959, the Georgia House passed an act prohibiting a municipality from collecting taxes for the support of a school system under court order to desegregate.[10] This bill denying local government the right to provide financial support for its schools because these schools were under court order to comply with the United States Constitution was approved by a 132-2 vote in the House. Voting with

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(Footnote 7 continued)

or college to which this Section 8 relates after an apportionment shall have been made thereto and funds made available to such school or college by the Budget Authorities, then and in such event no further funds shall be used or expended from such apportionment and the unexpended portion thereof shall be retained in the treasury. The Bureau of the Budget shall by written order determine when any such judgment has become effective.

* * *

[8] The 14 representatives voting in favor of this provision, and voting not to seat Bond, are:

George T. Bagby	J. Roy McCracken
Mac Barber	Glenn S. Phillips
J. Lucius Black	Mac Pickard
Johnnie L. Caldwell	Emory L. Rowland
James H. Floyd	George L. Smith, II
A. T. Land, Sr.	Joe C. Underwood
Chappelle Matthews	W. M. "Bill" Williams

See House *Journal*, Georgia General Assembly, Regular session, 1956, pp. 789-790.

[9] See the House *Journal*, Georgia General Assembly, Regular Session, 1956, p. 745.

[10] See House *Journal*, Georgia General Assembly, Regular Session, 1959, pp. 413-414 for text of the legislation.

the majority were 32 representatives who also voted to refuse to seat appellant Bond.[11]

In 1960, the Georgia House enacted Act 1504 amending the 1959 law just discussed. This amendment also required that the taxing power of a municipality "shall immediately terminate and cease" in the event of school desegregation in the municipality. This law was approved by a unanimous vote.[12] The House *Journal* does not

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[11] The 32 representatives voting in favor of H.B. 5 in 1959 and voting not to seat Bond, are:

George T. Bagby	Quimby Melton, Jr.
Mac Barber	David L. Newton
J. Lucius Black	Colquitt H. Odom
J. O. Brackin	Tom C. Palmer, Jr.
George D. Busbee	James W. Paris
Johnnie L. Caldwell	H. Walstein Parker
Philip M. Chandler	Glen S. Phillips
Jimmy Conner	Mac Pickard
James H. Floyd	Emory L. Rowland
Maddox J. Hale	J. R. Smith
Thomas T. Irvin	Virgil T. Smith
W. Harvey Jordan	William Burton Steis
Sidney Lowrey	Earl P. Story
Chappelle Matthews	Joe C. Underwood
Dorsey R. Matthews	George J. Williams
J. Roy McCracken	W. M. "Bill" Williams

See House *Journal*, Georgia General Assembly, Regular Session, 1959, pp. 413-414, for roll-call vote on the tax prohibition measure.

[12] Text of Act 504, 1960 Session, General Assembly of Georgia, as reprinted in 5 Race Rel. L. Rep. 520-521 reads in part (1960):

* * *

"Section 2. The authority hereby conferred upon municipal corporations to levy taxes may be exercised only for the purpose of levying such taxes for the support of separate public schools for the white and colored races. Whenever any public school system operated by any municipal corporation of this State shall admit any member of the colored race to any school maintained by said school system for members of the white race, or shall admit any member of the white race to any school maintained by said school system for

record a roll-call vote, but 41 legislators in the House at the time it approved the measure without a dissenting

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(Footnote 12 continued)

members of the colored race, or shall otherwise admit members of the white and colored races to the same school, then all power conferred upon any such municipal corporation by this Act shall immediately terminate and cease to be effective and no such municipal corporation shall thereafter have power or authority to levy any tax, ad valorem or otherwise, for the support and maintenance of public schools; and the Superior Court of the county shall have jurisdiction to enjoin any attempt to exercise any such power at the suit of any taxpayer of the municipality; provided, however, that the closing of any public school within such municipality by authority of State law shall not prevent the exercise of the power of taxation conferred by this Act for the support of public schools thereafter continued in operation as separate public schools for the white and colored races. Notwithstanding anything to the contrary in any section of this Act as amended, each municipal corporation, having an independent or public school system as referred to in section 1 hereof, shall have the power to and may levy and collect any tax, the lien of which attached prior to the admission of one or more members of both white and colored races to the same public school maintained by such municipal corporation, and the proceeds of said tax may be used for the support of any public school in said system until one or more members of both the white and colored races are admitted to that public school, or to satisfy indebtedness incurred to provide funds for the support of public schools in said system, which indebtedness was incurred prior to the admission of members of both the colored and white races to any one public school in said system. The certificate of the person or persons authorized to borrow money on behalf of any such municipal corporation shall be conclusive for the purposes of the preceding sentence as to the fact that no members of both the white and colored races have been admitted to any one public school in said system prior to the time of the making of any such loan." * * *

vote were also in the House in 1966 when Julian Bond was denied his seat.[18]

There are numerous examples of individual legislators who expressed public and vigorous opposition to this Court's rulings on desegregation and who not only took

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[18] The 41 representatives (a) in the House in 1960, and (b) voting not to seat Bond, are below:

George T. Bagby
Mac Barber
J. Lucius Black
D. B. Blalock
J. O. Brackin
George D. Busbee
Johnnie L. Caldwell
Philip M. Chandler
Jimmy Conner
A.B.C. (Brad) Dorminy
William M. Fleming, Jr.
James H. Floyd
Maddox J. Hale
Thomas T. Irvin
W. Harvey Jordan
William J. (Bill) Lee
W. Herschel Lovett
Sidney Lowrey
Chappelle Matthews
Dorsey R. Matthews
J. Roy McCracken
Quimby Melton, Jr.
Jimmy D. NeSmith
David L. Newton
Colquitt H. Odom
Tom C. Palmer, Jr.
James W. Paris
H. Walstein Parker
Glen S. Phillips
Mac Pickard
Ben B. Ross
Emory L. Rowland
George L. Smith II
J. R. Smith
Virgil T. Smith
William Burton Steis
Earl P. Story
Joe C. Underwood
Hubert H. Wells
George J. Williams
W. M. "Bill" Williams

All members in the House did not vote for Act 504 but no vote in opposition was recorded.

their seats without challenge in 1966, but who also voted not to seat Julian Bond.[14] Specifically, Howard T. Overby of Gainesville (along with numerous public leaders in Georgia state government including the governor, lieutenant governor, attorney general, etc.) was one of the early organizers of the States Rights Council of Georgia, Inc., a White Citizens' Council-type group which announced as its stated purpose a concentrated fight against national policy and this Court's interpretation of the Constitution. (See Atlanta *Constitution*, September 24, 1955.) As a member of the Georgia Senate, Mr. Overby also steered the Interposition Resolution through the upper chamber and co-sponsored the bill mentioned earlier punishing peace officers who did not oppose national desegregation policies. (Atlanta *Constitution*, February 14, 1956; Senate *Journal*, Georgia General Assembly, Regular session, 1956, p. 495.)

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[14] There were twelve votes cast against the resolution not to seat appellant Bond and nine legislators were recorded as not voting. Those recorded as voting nay were:

W. H. (Bill) Alexander	Mrs. Grace Hamilton
Ben D. Brown	John Hood
Rodney M. Cook	Frank R. Lea
J. C. Daugherty	Elliot Levitas
M. J. Egan, Jr.	Kil Townsend
Jack Ethridge	R. H. Walling

Those recorded as not voting were:

Julian Bond	Howard Rainey
T. J. Dillon	Allen B. Smith
J. D. Grier	George T. Smith, Speaker
R. S. Hutchinson	Albert Thompson
D. F. McClatchey	

Of the eight Negro legislators Mrs. Hamilton, Messrs. Alexander Brown, Daugherty and Hood voted against the resolution, and Messrs. Grier, Thompson and the appellant were recorded as not voting. Thus, thirteen white legislators voted in the negative or abstained. The tally was 184 for 12 against and 9 not voting. See House *Journal*, Georgia General Assembly, Regular Session, 1966, p. 45, for roll call vote on H. R. Resolution 19.

Another example is H. Walstein Parker of Sylvania, a member of the Georgia Committee on Schools (Sibley Committee), which in 1960 recommended acceptance of token desegregation rather than closure of the state's public schools. Mr. Parker, however, voted against the Sibley report, joining instead with the committee minority in recommending a continuation of massive resistance to national desegregation policy. (*Report of the Minority,* Committee on Schools, 5 *Race Rel. L. Rep.,* 517-519 (1960). Mr. Parker also voted against the seating of Bond in 1966. Even the attorney for the House in the Bond hearings, Denmark Groover of Bibb County, had been House floor leader for the interposition resolution of 1956. (Atlanta *Constitution,* February 9, 1956.)

Clearly, Julian Bond was hardly alone in the Georgia House in opposing national policy at one time or another. Both individual legislators and the legislature as a whole have openly resisted declared national policy. Such resistance had not heretofore been deemed a disqualification for membership in the legislature, and certainly not when that opposition took the form of white officials condemning a policy requiring the equal treatment of Negroes.

This Court may also take judicial notice that the present Democratic nominee for governor of Georgia is a nationally known, rabid segregationist who, rather than comply with a court order requiring him to serve Negroes in his restaurant pursuant to the Civil Rights Act of 1964, see *Heart of Atlanta Motel* v. *United States,* 379 U. S. 241; *Katzenbach* v. *McClung,* 379 U. S. 294, openly defied the court and, when faced with contempt citation closed his place of business before he would abide by the requirement of equal treatment. *Willis* v. *Pickwick Restaurant,* 234 F. Supp. 179 (N D Ga. 1964). Members of the legislature which denied appellant his seat have now endorsed and are supporting Mr. Maddox's candidacy.

The conclusion is inescapable that the standard applied by the House to bar appellant from taking his seat in the

General Assembly was utilized because of his race and the unpopularity of the views he expressed. As such it constituted a form of racial discrimination offensive to the mandate of the 14th Amendment.

It was pointed out that seven Negroes had been seated and participated fully in the proceeding concerning Mr. Bond both before the committee and on the floor of the House. It is clear, however, that it is no answer to Mr. Bond's assertion of a denial of equal protection that other Negroes were not summarily denied equal protection as well. *Buckner* v. *County School Board of Greene County, Virginia,* 332 F. 2d 452 (4th Cir. 1964); *Downs* v. *Board of Education of Kansas City,* 336 F. 2d 988 (10th Cir. 1964); *Adams* v. *School District Number 5, Orangeburg County, South Carolina,* 232 F. Supp. 692 (E.D.S.C. 1954). Mr. Bond's guarantee of equal protection is personal and present. *McLaurin* v. *Board of Regents,* 339 U. S. 637.

This action necessarily reveals to Negro legislators that they cannot with impunity dissent from policies and views favored by white legislators and white electors. The standard of ineligibility because of opposition to "national public policy" asserted in this case has been applied only to Mr. Bond and apparently is of force and effect only as needed to punish a Negro legislator who expresses views offensive to the controlling white majority.

Race discrimination cannot be divorced from the legislature's act in this instance. Whatever power the legislature may be able to exercise in this regard, it cannot use that power to effectuate a forbidden discrimination. *Yick Wo* v. *Hopkins,* 118 U. S. 356; *Cooper* v. *Aaron,* 358 U. S. 1. "Acts generally lawful may become unlawful when done to accomplish an unlawful end." *United States* v. *Reading Co.,* 226 U. S. 324, 357. See *Western Union Telegraph Co.* v. *Fortes;* 247 U. S. 105, 114; *Gomillion* v. *Lightfoot,* 364 U. S. 339, 347-348. The inescapable result of the legislature's power utilized here is to subject Negro legislators to tests not required of their white counterparts. This the Fourteenth Amendment forbids.

Appellant Bond has been Denied Constitutionally Guaranteed Rights to Freedom of Speech

The purpose of the First Amendment is to secure unrestricted political discussion of the affairs of the government without fear of punishment. *Cox* v. *Louisiana,* 379 U. S. 536, 552; *Stromberg* v. *California,* 283 U. S. 359; *New York Times Co.* v. *Sullivan,* 376 U. S. 254, 270; *Garrison* v. *State of Louisiana,* 379 U. S. 64. Its mandate is not merely insurance of freedom to express the accepted or the fashionable, but its fundamental purpose is to protect the freedom of those who espouse controversial views on issues of public concern.

In *New York Times* v. *Sullivan,* 376 U. S. 254, 270, this Court stated:

> Thus we consider this case against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust and wide open, and that it may well include vehement, caustic and sometimes unpleasantly sharp attacks on government and public officials.

On every public issue there are opponents and proponents with clashing views. In *Thornhill* v. *Alabama,* 310 U. S. 88, 95, this Court stated:

> Freedom of discussion, if it would fulfill its historic function in this nation, must embrace all issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of their period.

In *Terminiello* v. *Chicago,* 337 U. S. 1, 4, it said:

> The vitality of civil and political institutions in our society depends on free discussion . . . it is only through free debate and free exchange of ideas that government remains responsive to the will of the people and peaceful exchange is effected.
>
> Accordingly the function of free speech under our system of government is to invite dispute. It may

> indeed serve its high purpose when it induces a condition of unrest, creates dissatisfactions with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea, freedom of speech, though not absolute is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantial evil that arises far above public inconvenience, annoyance and unrest. There is no room under our Constitution for a more restrictive view. For the alternative would lead to standardization of ideas either by legislatures, courts or dominant political or community groups.

Appellant's statement was obviously not liked by his fellow members of the House and caused resentment, consternation and genuine concern, particularly since the SNCC declaration appellant endorsed had aligned the Negro's struggle here in the United States with opposition to the war in Viet Nam. Neither consternation, resentment nor concern, however, constitute a justifiable basis for governmental intrusion in the protected area of free speech.

When dealing with utterances that create public controversy and threaten to cause breaches of the peace, this Court has at times used the "clear and present danger" test to determine the permissible limits the Constitution affords the exercise of free speech rights where it impinges on state power to maintain peace and order.

The "clear and present danger" test as first proclaimed in *Schenck* v. *United States,* 249 U. S. 47, 52, was stated in these terms:

> The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree.

In *Bridges* v. *California,* 314 U. S. 252, 262, 263, this Court restated the formula in an even more stringent format:

> . . . the likelihood, however great that a substantive evil will result cannot alone justify a restriction upon freedom of speech or the press. The evil itself must be "substantial," . . . even the expression of "legislative preferences or beliefs" cannot transform minor matters of public inconvenience or annoyance into substantive evils of sufficient weight to warrant the curtailment of liberty of expression.

Mr. Bond is not alone in opposing the Viet Nam war. There is a fierce debate throughout the country about our involvement in that conflict. Some of our most respected public officials in the highest circles of our government have voiced bitter opposition to our presence there. No present threat to our territorial integrity or the perdurance of our democratic institutions has yet been revealed. Despite appellant's encouragement of draftees to refuse to serve, there is no showing it had any adverse effect on the nation's war effort. Thus, applying the "clear and present danger" test to the statements made and the surrounding circumstances, there would appear to be no warrant for the punitive action taken.

Moreover, there is absent here any compelling justification in the form of a subordinating state interest pursuant to which governmental interference otherwise forbidden might be allowed. See *Sweezy* v. *New Hampshire,* 354 U. S. 234; *Weiman* v. *Updegraff,* 344 U. S. 148. No important state interest is being served by refusing to allow appellant to take his proper place as a member of the House. See *Pennsylvania* v. *Nelson,* 350 U. S. 497. Under this yardstick, the action of the House is at war with the Constitution's command.

Pursuant to whatever criteria the constitutional guaranty of free speech is measured, the denial by the members

of the House to appellant of his rightful seat because of disagreement with views he expressed as to this nation's involvement in Viet Nam constitutes a forbidden intrusion of the exercise of First Amendment rights secured against state intrusion under the 14th Amendment.

The Action of the Georgia House of Representatives in Refusing to Seat Julian Bond Not Only Impairs Appellant's Rights but Constitutes a Deprivation of the Franchise Rights of Qualified Voters in House District No. 136 As Well, In Violation of the Mandates of the Fourteenth and Fifteenth Amendments

This Court in a long series of cases has struck down a great variety of attempts to deny the right of suffrage to Negro citizenry. *Guinn* v. *United States,* 238 U. S. 347; *Myers* v. *Anderson,* 238 U. S. 368; *Nixon* v. *Herndon,* 273 U. S. 536; *Lane* v. *Wilson,* 307 U. S. 268; *Smith* v. *Allwight,* 321 U. S. 649; *Nixon* v. *Condon,* 286 U. S. 573; *Terry* v. *Adams,* 345 U. S. 461; *United States* v. *Thomas,* 362 U. S. 58; *Gomillion* v. *Lightfoot,* 364 U. S. 339; *Schnell* v. *Davis,* 336 U. S. 933; *Alabama* v. *United States,* 371 U. S. 37; *Louisiana* v. *United States,* 380 U. S. 145; *United States* v. *Mississippi,* 380 U. S. 128. The form of the discrimination is unconsequential. If it results in depriving Negro citizens of the right to vote, the Fifteenth Amendment's guarantee has been violated. See *South Carolina* v. *Katzenbach,* 382 U. S. 898. As was stated in *Lane* v. *Wilson,* at page 275:

> The reach of the Fifteenth Amendment against contrivances by a state to thwart equality in the enjoyment of the right to vote by citizens of the United States regardless of race or color, has been amply expounded by prior decisions. . . . The Amendment nullifies sophisticated as well as simple-minded modes of discrimination. It hits onerous procedural requirements which effectively handicap exercise of the franchise by the colored race although the abstract right to vote may remain unrestricted as to race.

Negro citizens of the 136th House District of Georgia may not be denied participation in the electoral process. Their rights to an unfettered and free choice of the person they desire to represent them in the state legislature are unquestioned. This Court noted in *Gomillion* v. *Lightfoot,* at 345-346:

> The opposite conclusion, urged upon us by respondents, would sanction the achievement by a State of any impairment of voting rights whatever so long as it was cloaked in the garb of the realignment of political subdivisions. "It is inconceivable that guaranties embedded in the Constitution of the United States may thus be manipulated out of existence."
>
> • • •
>
> The petitioners here complain that affirmative legislative action deprives them of their votes and the consequent advantages that the ballot affords. When a legislature thus singles out a readily isolated segment of a racial minority for special discriminatory treatment, it violates the Fifteenth Amendment.

The above rationale is apposite here. By the action being contested in this case, white members of the House of Representatives of the General Assembly established new and different criteria as a prerequisite for the right to represent the electors of the 136th House District than had heretofore been applicable to any other duly elected member of the House from any other district. The rights of electors of appellant Bond's district to vote and to choose their own representative have been unconstitutionally impaired, as in *Lane* v. *Wilson, supra, Gomillion* v. *Lightfoot, supra,* and cognate cases. In effect the State of Georgia through the action of the House of Representatives has put its Negro citizens on notice that of the Negro legislators they help to elect, only those who are careful in not publicly asserting views and positions offensive to the white legislators will be allowed to qualify to sit in the General Assembly. This creates in effect a prior restraint upon

the free exercise of the right to vote. Cf. *Cox* v. *Louisiana*, 379 U. S. 559; *Winters* v. *New York*, 333 U. S. 507; *Saia* v. *New York*, 334 U. S. 558.

While the Fifteenth Amendment guarantees exercise of rights of suffrage against restrictions of race and color, the equal protection clause of the Fourteenth Amendment is a guarantee against the dilution or diminution of the voting rights of some citizens as compared with that of others. The two constitutional provisions, therefore, more than guarantee the right to cast a ballot free of discrimination. *South* v. *Peters*, 339 U. S. 276 (Douglas, *J.*, dissenting). They protect against any unwarranted intrusion upon the right to vote which would impair, diminish or render meaningless exercise of suffrage rights which are the birthright of all our citizens. As this Court stated in *Wesberry* v. *Sanders*, 376 U. S. 1, 17-18:

> No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right.

And in *Reynolds* v. *Sims*, 377 U. S. 533, 561, 562:

> . . . Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.
>
> • • •
>
> As long as ours is a representative form of government, and our legislatures are those instruments of government elected directly by and directly representative of the people, the right to elect legislators in a free and unimpaired fashion is a bedrock of our political system.

The right to vote is given full protection under the Constitution in order that its exercise may be truly free and untrammeled. As Mr. Chief Justice Warren said in *Reynolds* v. *Sims* at pages 554-555:

> . . . It has been repeatedly recognized that all qualified voters have a constitutionally protected right to vote, *Ex parte Yarbrough*, 110 U. S. 651 . . . and to have their votes counted, *United States* v. *Mosley*, 238 U. S. 383 . . . In Mosley, the Court stated that it is "as equally unquestionable that the right to have one's vote counted is as open to protection . . . as the right to put a ballot in a box." 238 U. S., at 386 . . . The right to vote can neither be denied outright, *Guinn* v. *United States*, 238 U. S. 347 . . . *Lane* v. *Wilson*, 307 U. S. 268 . . . nor destroyed by alteration of ballots, see *United States* v. *Classic*, 313 U. S. 399 . . . nor diluted by ballot-box stuffing, *Ex parte Siebold*, 100 U. S. 371 . . . *United States* v. *Saylor*, 322 U. S. 385 . . . As this Court stated in *Classic*, "Obviously included within the right to choose, secured by the Constitution, is the right of qualified voters within a state to cast their ballots and have them counted . . ." 313 U. S. at 315 . . . Racially based gerrymandering, *Gomillion* v. *Lightfoot* . . . and the conducting of white primaries, *Nixon* v. *Herndon* . . . *Nixon* v. *Condon* . . . *Smith* v. *Allwright* . . . *Terry* v. *Adams* . . . both of which result in denying to some citizens their right to vote, have been held to be constitutionally impermissible. And history has seen a continuing expansion of the scope of the right of suffrage in this country. The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government.

In subsequent litigation this Court has struck down a variety of reapportionment plans because it could discover no rational state interest to justify a deviation from the one man, one vote rule. Among the factors held insufficient justification for a state to deny numerical equality of

representation to its citizens are: a state's heterogeneous characteristics, *Lucas* v. *Forty-Fourth General Assembly*, 377 U. S. 713; balancing urban and rural power, *Davis* v. *Mann*, 377 U. S. 678; representation for sparsely settled areas, *W.M.C.A.* v. *Lomenzo*, 377 U. S. 633; protecting insular minorities, *Lucas* v. *Forty-Fourth General Assembly*, 377 U. S. 713; preventing overly large districts and representation of economic or group interests, *Reynolds* v. *Sims, supra;* geographical or topographical considerations, *W.M.C.A.* v. *Lomenzo, supra;* permanent or temporary residence, *Davis* v. *Mann, supra;* the history or tradition of a state. *Maryland Committee for Fair Representation* v. *Tawes*, 377 U. S. 656; approval by electorate, *Lucas* v. *Forty-Fourth General Assembly, supra;* state constitutional requirements, *W.M.C.A.* v. *Lomenzo, supra;* federal analogy, *Maryland Committee for Fair Representation* v. *Tawes, supra;* and an electoral college analogy, *Reynolds* v. *Sims, supra.*

The state interest sought to be protected is the right to require the unflagging loyalty of its officials to the support of national policy. But history demonstrates that such an interest, if it exists, was only asserted in this case. Where national policy has mandated freedom and equality without regard to considerations of color, legislators have been allowed to flaunt it with impunity. Here, however, appellant took a stand opposed by his white colleagues, and even though the views he expressed were endorsed in subsequent re-election on two occasions, the state asserts an overriding interest to deny him the right to a seat in the House of Representatives.

It is respectfully submitted that the constituents of the 136th House District have thereby been deprived of the right to cast an effective vote and denied the equal protection of the laws. These rights of his constituents may be properly asserted in this cause by appellant Bond. *NAACP* v. *Alabama*, 357 U. S. 449.

CONCLUSION

For the foregoing reasons and for the reasons set forth in appellants' brief, it is respectfully submitted that the judgment of the court below should be reversed.

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